

1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF NEW JERSEY

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 CIVIL ACTION NUMBER:  
4 IN RE: VALSARTAN PRODUCTS 1:19-md-02875-RBK-JS  
5 LIABILITY LITIGATION  
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 STATUS CONFERENCE  
7 (Via telephone)

8 Wednesday, June 24, 2020  
9 Commencing at 10:00 a.m.

10 B E F O R E: THE HONORABLE JOEL SCHNEIDER,  
11 UNITED STATES MAGISTRATE JUDGE

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25

1 (ALL PARTIES VIA TELEPHONE JUNE 24, 2020 10:06 A.M.)

2 THE COURT: We're on the record in the Valsartan MDL,  
3 Docket No. 19-2875. There's lots of people on the phone, but  
4 why don't we get the entries of appearance for the lead  
5 counsel for both sides, plaintiffs and defendants, and if  
6 anyone else is going to talk, just introduce yourself before  
7 you speak. So, let's start with the appearances of the  
8 plaintiff.

9 MR. SLATER: Good morning, Adam Slater for the  
10 plaintiffs.

11 MR. NIGH: This is Daniel Nigh for the plaintiffs.

12 MR. HONIK: Good morning, Your Honor, Ruben Honik for  
13 the plaintiffs.

14 MS. WHITELEY: Good morning, Your Honor, Conlee  
15 Whiteley for the plaintiffs.

16 THE COURT: And for the defendants?

17 MR. GOLDBERG: Good morning, Your Honor, this is Seth  
18 Goldberg for the ZHP parties and the defendants.

19 MS. COHEN: Good morning, Your Honor, this is Lori  
20 Cohen on behalf of the Teva defendants. Also Ms. Victoria  
21 Lockard is on with us as well.

22 MS. LOCKARD: Good morning.

23 MS. JOHNSTON: This is Sarah Johnston for CVS  
24 Pharmacy, Inc., and the retailer defendants.

25 MR. GEOPPINGER: Good morning, Your Honor. Jeff

1 Geoppinger, G-E-O-P-P-I-N-G-E-R, from AmerisourceBergen and  
2 the wholesalers defendants.

3 THE COURT: Okay. I received your letters. Thank  
4 you very much. We don't really have that heavy of agenda  
5 today.

6 First thing I want to say is just want to again  
7 commend the parties for the way they worked out the search  
8 term issue. I've been getting the orders from Mr. Goldberg.  
9 Everything has been entered, I think, that we received. If I  
10 missed something, Mr. Goldberg, please let me know. I  
11 entered -- I signed this morning the one you sent me  
12 yesterday. I think, Mr. Goldberg, I've entered three  
13 stipulations. Are those all that you sent me?

14 MR. GOLDBERG: I sent you Torrent's, Aurobindo,  
15 Hetero, and ZHP. I have to look at -- I'll look after this  
16 call and send an e-mail if others -- if they haven't hit the  
17 docket yet.

18 THE COURT: Okay. Yeah, you might just wait a little  
19 while. I signed one this morning. I sent it to my deputy.  
20 Those all sound familiar. I said I thought I signed three.  
21 Maybe I signed four.

22 But anyway, again, I just want to commend the  
23 parties. I'm glad you worked it out. It's better that you  
24 reached agreement than the Court imposes some order that one  
25 of the parties might find unfair. I just wish, like with the

1 sales and pricing issue we're going to discuss, I just wish  
2 that we could instead of having all the argument and briefs  
3 and conference calls about the issue and then working it out,  
4 it would be nice if we lived in a perfect world, if the  
5 parties could reach agreement on those issues and we could  
6 enter orders without so much argument. But I suppose that's  
7 the nature of the beast.

8 But really, the -- I'll discuss any issues the  
9 parties want to address, but the two issues it seems like we  
10 have for today's agenda are just to touch base about this core  
11 deficiency issue and then the sales and pricing documents.

12 Why don't we start with the core deficiency issue. I  
13 don't think I need to do anything today, but we ought to just  
14 discuss how we're going to approach that, and I'm going to ask  
15 Loretta to step in in a moment, she's Judge Kugler's permanent  
16 law clerk and she handles that orders to show cause issue and  
17 she worked on the *Benicar* case.

18 But when -- I looked at Exhibit A in your letter,  
19 Mr. Goldberg, and I mean I don't think you're really expecting  
20 the Court to get involved in issues about whether someone put  
21 the date that they were diagnosed as obese or something not  
22 terribly consequential to the case. When we talk core  
23 deficiencies, we're talking about, you know, plaintiffs who  
24 don't answer the fact sheet or don't respond or don't submit  
25 fact sheets, or there's some type of significant material

1 issue.

2           It looked to me like different people went through  
3 plaintiff's fact sheet just like they do in answers to  
4 interrogatories, and these are my words, "nitpicked" it for  
5 everything that wasn't perfect. But I don't really think  
6 that's what this order to show cause process was designed to  
7 address. Hopefully, the counsel in the case can meet and  
8 confer and talk about those types of issues, but when we talk  
9 about an order to show cause, we're really talking about some  
10 material, significant, substantial issue. Is there a  
11 different understanding on the defendants' part?

12           MS. LOCKARD: Your Honor, it's Victoria Lockard, and  
13 I intend to address this on behalf of the defendant.

14           First of all, you know, there were a number of  
15 deficiencies that were not listed on this chart. We've gone  
16 through very carefully to try to identify things that are  
17 consequential. The underlying problem that we're having, and  
18 I agree that some of this could be worked out and in instances  
19 where the individual plaintiffs' attorney has reached out to  
20 defendant, you know, provided an explanation, why there's a  
21 difficulty in filling in certain gaps, we've worked with them,  
22 we've taken them off the list.

23           The essential problem here is that we have dozens of  
24 plaintiffs who are essentially ignoring the deficiency letters  
25 we're sending. We've listed some of these names since April,

1 May, now are June. We've sent them deficiency letters.  
2 They're not reaching out. And Ms. Goldenberg and I have had  
3 some meet and confers, you know, we're willing to work with  
4 each other I think to try to bridge this. But the concern is  
5 that the individual plaintiffs' lawyers out there are simply  
6 ignoring our effort.

7           If this were a normal, typical single plaintiff case,  
8 we would send our letter, sure, we might do some nitpicking,  
9 there would be a process, a meet and confer, a phone call, and  
10 we'd work through this, we'd give a little improvised more  
11 information. That's not happening, and what they're telling  
12 us is, oh, Your Honor, well, the plaintiffs' lawyers haven't  
13 been able to find the right person because there's no contact  
14 information on the letterhead. These letters are going to  
15 plaintiffs from names like Seth Goldberg, Clem Trischler,  
16 Brian Rubenstein at Greenberg, people who are all on the  
17 defendants' executive committee, who are on all the  
18 transcripts. Their information is on ECF and they're telling  
19 us that for three months no one can locate Seth Goldberg to  
20 initiate a phone call to address the deficiencies. It's  
21 unbelievable.

22           So we're at -- you know, our hands are tied. We're  
23 unable to get this resolved, we don't want to come to the  
24 Court and argue over a date, you know, that somebody's  
25 obesity, you know, started. But we think the plaintiffs need

1 to do some work here. They need to reach out, get these  
2 resolved so that we can present a realistic list to the Court,  
3 then have the Court issue the show cause order as was intended  
4 by this process and then we'll come back in the July CMC and  
5 we'll actually argue those that need to be argued. That's our  
6 position.

7 THE COURT: All right. Let me just ask you a  
8 question or two and we'll hear from the plaintiff.

9 I'm assuming, and I could be wrong, that when a, I'll  
10 call it a deficiency letter, is sent to the plaintiff, that  
11 it's not signed by Mr. Goldberg or someone from the executive  
12 committee. Am I wrong about that?

13 MS. LOCKARD: It is issued through the Centrality  
14 system, and the defendants have divided these up because, you  
15 know, certain cases are against certain defendants. The  
16 letters that are going out from Mr. Goldberg's firm have his  
17 name on them with instructions to contact Mr. Goldberg.

18 THE COURT: I'm just -- the reason why I ask the  
19 question is because, again I could be wrong, I don't think  
20 Mr. Goldberg is the person who's going to negotiate or meet  
21 and confer directly with the plaintiffs' attorney about  
22 whether they're missing a date or some oversight on an answer  
23 to a fact sheet. It's going to be someone in his firm who  
24 does that. If the plaintiffs' attorney knows who that person  
25 is, and we'll hear from the plaintiffs, there's no excuse, and



1 I agree with you, that they don't respond to the letter. But  
2 do the plaintiffs know -- it's not going to be Mr. Goldberg  
3 who's going to get a thousand phone calls about different fact  
4 sheets, and who's going to sit on the phone and go over each  
5 particular plaintiff. It's someone in his firm, right?

6 So does the plaintiffs' counsel know who to talk to  
7 about that issue? And if they don't, they will, and  
8 certainly, they have a duty to respond and we're going to talk  
9 about a deadline to respond to that, because you're a hundred  
10 percent right.

11 So why don't we hear what plaintiffs' position is.

12 MS. GOLDENBERG: Your Honor, this is Marlene  
13 Goldenberg on behalf of the plaintiffs. I've been working  
14 with Ms. Lockard on this issue and we did discuss the contact  
15 problems that we've been having. I can tell you that I  
16 personally got a letter, and I believe it was from Megan  
17 Grossman. Because I'm on the PSB, I was able to look her  
18 information up. But if I wasn't on the PSB, there's no firm  
19 even listed on these letters that we're getting.

20 But what we had originally done was gone into MDL  
21 Centrality, we had fixed the problem knowing that defendants  
22 get notifications when an amended plaintiff fact sheet is  
23 listed, but apparently that didn't do anything for the  
24 defendants, because I received e-mails from five different  
25 plaintiffs' firms when we circulated this exhibit to them, who

1 all told me that they had fixed the issue, they had contacted  
2 defense counsel and these cases still remained on the exhibit.

3 So I think the issue that we're running into is that  
4 because this project on the defendants' side seems to have  
5 been so separated between different firms, there just isn't  
6 the coordination that needs to be happening on their side to  
7 make sure that people are, one, reviewing the correspondence  
8 from plaintiffs' counsel when it comes back in, and two,  
9 taking these cases off the list when things happen.

10 But I wanted to return to Your Honor's point where  
11 you talked about what constitutes a core deficiency.

12 It's our position that show cause orders shouldn't  
13 just automatically be issued because defendants identify some  
14 kind of a problem that they think is any kind of a deficiency.  
15 Going back to your point, a core deficiency should be a  
16 significant or material issue. It shouldn't be the date that  
17 somebody decided that they got constipation, it shouldn't be  
18 any of the other examples that we included in our letters, and  
19 we are more than happy to meet and confer with defense counsel  
20 on what constitutes a core deficiency. But we don't think  
21 that a show cause order should be the first line of defense  
22 here. A show cause order shouldn't go out until it's been  
23 determined either by the parties or with the Court's  
24 assistance if necessary that, one, the deficiency exists, but  
25 two, that it's also a core deficiency. And if it is, the show

1 cause order can go out and the plaintiff can respond to that  
2 and it can be decided with the following case management  
3 conference.

4 But right now, I just don't think we are at that  
5 point. There are so many errors on this list that the defense  
6 sent to us yesterday, and knowing that five different firms  
7 were able to get back to us right away saying that not only  
8 these, you know, are these deficiencies not core, but they  
9 don't even exist anymore, I think we have some work to do, and  
10 we're more than happy to work with defense counsel on this so  
11 that when we are ready to present this issue, it's a much --  
12 it's narrowed in scope so that we can actually talk about  
13 concrete parts of the plaintiffs' fact sheet.

14 THE COURT: Ms. Goldenberg, can you help me  
15 understand mechanically how this works so when the fact sheets  
16 are served, they're served to Centrality; is that right?

17 MS. GOLDENBERG: That's right, Your Honor. We would  
18 log into Centrality, plug in all the information and when it's  
19 all there, we hit the serve button. On the defense side, they  
20 have e-mail addresses programmed in and they get some  
21 notification from BrownGreer saying that there is a fact sheet  
22 ready for their review.

23 THE COURT: So now defendant has the fact sheets --  
24 and this is just hypothetical -- they find deficiencies in it.  
25 What then happens? What does the defense side do?

1 MS. GOLDENBERG: So they -- the way they explained it  
2 to me was they generate it or they have people on their side,  
3 they've divided the plaintiffs up by firm and by defendants.  
4 They would go back in, put a letter in through Centrality and  
5 use Centrality to serve that letter sort of in the way that he  
6 would use CM/ECF to serve something to the Court.

7 And so Centrality would then fire off an e-mail  
8 through its own system, and if it's my client, for example, I  
9 would get an e-mail from MBL Centrality saying, you have a  
10 notification from the defendant, and that would be available  
11 in my client's portal.

12 THE COURT: So the first thing that we have to do, if  
13 it hasn't already been done, is if that letter is presently  
14 signed by Mr. Goldberg, he's not the person who's going to  
15 talk with plaintiffs' counsel about the deficiency.

16 Does the e-mail or the letter that the plaintiff gets  
17 to Centrality identify who the plaintiff should meet and  
18 confer with? And if not, isn't it essential that they know  
19 who that person is?

20 MS. GOLDENBERG: It does not and, yes, and to be fair  
21 to defendants, we did talk about this issue on a  
22 meet-and-confer call yesterday. They had agreed to provide  
23 the contact information on who plaintiff should be meeting and  
24 conferring with up until, well, I guess through the present,  
25 but we don't have it yet. The plaintiffs don't have that

1 information.

2 THE COURT: Okay. So from here on out, we solved  
3 that problem.

4 Now, you don't disagree, do you, that the plaintiffs  
5 have a duty to respond within X amount of time to the  
6 deficiency letter. Maybe they won't work it out, but they  
7 can't just sit and ignore it, correct? That's not debatable,  
8 right?

9 MS. GOLDENBERG: No, and we're not fighting on that.

10 THE COURT: So help me. Under the present process,  
11 do we have anything in place that says that once the plaintiff  
12 receives a deficiency notice that identifies the contact  
13 person for the defendant, they have X amount of time to reach  
14 out to meet and confer, and if we don't have that, shouldn't  
15 we put that in place?

16 MS. GOLDENBERG: Yes, Your Honor, I believe that your  
17 prior order discussed that, and Ms. Lockard can chime in if  
18 she's got the order in front of her, but we, I think, had  
19 given plaintiffs -- I hope I'm saying this right, I think it  
20 was 30 days to respond to the letter. If there was no  
21 response or if the meet and confer was unsuccessful, the  
22 defendants would be able to put the client's name on the list.  
23 It would go to the Court and then we could have a debate about  
24 whether that deficiency is core. That part is not in the  
25 order, I don't think, because we were debating that on the

1 meet and confer yesterday.

2 And then, you know, we would have the orders go out  
3 and then the following case management conference, my  
4 understanding is that in Benicar Judge Kugler likes to be the  
5 one making that decision. If that's not the case here, we're  
6 certainly flexible, but then the following CMC, those issues  
7 would be decided.

8 THE COURT: So let's take the easy case. Defendant  
9 says -- defendant sends the deficiency letter. It notifies  
10 the contact person, plaintiff doesn't respond in 30 days.

11 In the Court's view, that's a core deficiency, it  
12 should go on the list. No dispute about that, right?

13 Ms. Johnston?

14 MS. JOHNSTON: Correct.

15 THE COURT: Okay. They say blow off the plaintiff, I  
16 don't know, for whatever reason, that's a core deficiency. No  
17 debate about it.

18 Let's take the other situation, where the plaintiff  
19 gets the letter, they meet and confer, and there's a genuine  
20 dispute about whether it has to be supplemented, amended,  
21 whatever, and whether there's a core issue.

22 Now, I could be wrong and, Loretta, help me here, but  
23 I think what we did in *Benicar*, was we would address that  
24 issue at the monthly conference, the end of the month, we  
25 would address that issue in the morning, identify what's core

1 and what's not core, and then when we get to the afternoon  
2 with Judge Kugler, identify the orders that show cause that  
3 should be entered.

4 I'm suggesting that might be a way to address this,  
5 so we could move this along.

6 Loretta, is that how we did it in Benicar?

7 MS. SMITH: It was. Ms. Sharko of Drinker Biddle  
8 would confirm which plaintiffs' fact sheets were deficient  
9 after the morning discussion. And if this was a second sheet  
10 conference deficiency, then an order to show cause order would  
11 go out the next day for return by the next conference, monthly  
12 conference. Yes, Judge.

13 MS. JOHNSTON: We're fine with doing that here, Your  
14 Honor.

15 THE COURT: Okay. So let's just make sure that we're  
16 clear from here on out, and then I'm going to ask Loretta to  
17 address sort of a format of how this should be presented.

18 From here on out, defendants are going to identify  
19 the contact person. The plaintiffs have 30 days to respond,  
20 you know, to meet and confer, not by e-mail. Pick up the  
21 phone. It can't -- it has to be done -- the parties have to  
22 talk.

23 If there's no response in 30 days, unquestionably,  
24 hundred percent goes on the core dispute, order to show cause  
25 list, whatever.

1           If the parties talk and dispute whether or not a  
2 particular issue is core or not, then we'll address it in the  
3 morning conference at the end of the month. That will be an  
4 issue for the agenda for the morning conference and the Court  
5 will either decide if it's core, then the order to show cause  
6 is not going to be issued. If it's noncore, the Court could  
7 always say, it has to be supplemented within 20 days without  
8 issuing an order to show cause, if it's not material,  
9 significant, what have you. All right?

10           MS. LOCKARD: Your Honor, it's Victoria Lockard. The  
11 original order did not allow 30 days to respond to the  
12 deficiency letter. It allowed two weeks.

13           THE COURT: If that's what the order says, then we'll  
14 go with two weeks. So plaintiff gets a letter, they have two  
15 weeks to pick up the phone and call whoever the contact person  
16 is. All right? So we have that procedure going forward.

17           Loretta, do you want to indicate to the defendants  
18 the format in which you want this information submitted to  
19 help you with these orders?

20           MS. SMITH: Thank you, Judge.

21           I would just like to say, because I'm the one who  
22 actually issues the show cause orders, it really helps if  
23 either in your letter appended at the end of your monthly CMC  
24 letter, or in the exhibit appended to your letter, you list  
25 the plaintiffs' names and each CMC of the two that the



1 deficiency has appeared in, and then I do not have to go back  
2 and figure out what and when the deficiency appeared.

3           You can, if you want, list the kind of deficiency,  
4 but just the deficiency that -- just listing the CMC is just  
5 fine with me, and then we can amend that exhibit or table in  
6 your letter, depending on how the CMC determines whether the  
7 deficiency is core or not.

8           So thank you, if you just give me the two month  
9 dates, that will be -- that will really be helpful.

10           Thanks, Judge.

11           MS. GOLDENBERG: Your Honor, this is Marlene  
12 Goldenberg. I just have two small points of clarification. I  
13 just wanted to make sure that we're continuing the procedure  
14 that we had discussed at a prior CMC where the case will be  
15 listed twice before an order to show cause goes out; is that  
16 right?

17           THE COURT: I think that's what the order says,  
18 Ms. Goldenberg, and we're going to follow the order. I don't  
19 have it in front of me, so I don't have a thousand percent  
20 certainty. But if that's what's in the order, that, of  
21 course, is what we're going to follow.

22           MS. GOLDENBERG: Perfect.

23           MS. SMITH: Judge, TMO 16 does say that there are two  
24 CMCs at which the deficiency is noted. After the second CMC  
25 if the deficiency hasn't been cured by the second conference,

1 monthly conference, then an order to show cause is issued, and  
2 the hearing date for that is the next monthly CMC.

3 MS. GOLDENBERG: And then the other point of  
4 clarification I just wanted to ask was we are of course happy  
5 to pick up the phone if there are disputes, but if the  
6 plaintiff simply fixes the issue and serves the plaintiff fact  
7 sheet through Centrality, again, which would provide a  
8 notification to defendants, I just wanted to make sure that  
9 the Court doesn't have a problem with couching that as  
10 compliance with responding to the letter.

11 MS. LOCKARD: Your Honor, if I may respond to that.  
12 So part of the concern, I think, is it's a technical issue  
13 with plaintiff loading things in certain places of Centrality.  
14 It's not appearing to us on the defendants' side.

15 In the last few days, we've had a team reach out to  
16 us as well, to our firm -- this is Victoria Lockard for the  
17 record, by the way, and we've been able to resolve some of  
18 those. I mean, for example, there was one where a plaintiff  
19 had mistakenly submitted a medical monitoring fact sheet which  
20 had issues, and so we were able to resolve that. But if  
21 plaintiffs think they've, you know, corrected an issue on  
22 Centrality and they just sent us an e-mail that says they  
23 stand corrected, and we don't agree, then that's not a proper  
24 meet and confer.

25 I do think that, you know, we will take a look at

1 every one if we get contacted by e-mail, but if it's not  
2 something that is obvious, we have to have that  
3 meet-and-confer process.

4 And we agreed to provide a contact sheet to  
5 Ms. Goldenberg to have, you know, this process happen and  
6 smooth out these wrinkles. We are very organized on the  
7 defense side, we have a plaintiff fact sheet subcommittee. We  
8 communicate daily by e-mail, and so this is not something that  
9 can't be, you know, managed. But just to get an e-mail or  
10 just to have a plaintiff correct something on Centrality and  
11 then not reach out to confirm with us is not going to advance  
12 this process.

13 THE COURT: Plaintiff, do you think it would be  
14 helpful, and you know the mechanics of how this works better  
15 than me, but the hypothetical where the defendant sends the  
16 deficiency letter, plaintiff says, okay, I'm going to  
17 supplement my fact sheet, I'm going to file my supplement  
18 through Centrality. Would it be helpful in addition to just  
19 sending something through Centrality, if the plaintiff's  
20 lawyer also sends an e-mail to whoever sent -- a direct e-mail  
21 to whoever sent that deficiency letter, to notify them that a  
22 supplement has been filed on Centrality. Because I don't know  
23 if the plaintiff files that supplement on Centrality, is the  
24 associate or partner, whatever, who's responsible for that  
25 fact sheet getting specific notice that a supplement was

1 filed?

2 MS. GOLDENBERG: It's supposed to -- well, so when we  
3 serve an amended plaintiff fact sheet, what it does is it  
4 actually sends a notification through e-mail to the defendant  
5 and so, you know, they're asking for e-mails, and that's  
6 exactly what this gives them.

7 THE COURT: Separate question, does the e-mail go to  
8 the person who sent the deficiency letter, or does it just go  
9 to Mr. Goldberg along with the thousands of other e-mails he  
10 gets?

11 MS. GOLDENBERG: You know, that's a setting that the  
12 defendants have control over. Each side has the ability to  
13 work with BrownGreer and set up their accounts so that  
14 notifications go to whatever e-mail address they want.

15 So if the defendants' PFS subcommittee wanted to  
16 designate other e-mail addresses where they wanted those  
17 notifications to go to, my understanding is they have the  
18 power to do that.

19 MS. LOCKARD: And we are able to get -- we are able  
20 to get those notices, we do get those notices.

21 THE COURT: Okay.

22 MS. LOCKARD: The breakdown is not in getting the  
23 notices, it's that if the plaintiffs don't properly upload  
24 something or they don't address the issue but they think that  
25 they have, that communication is not happening.

1           THE COURT: That's why I wonder, if you don't think  
2 it's helpful, then don't do it. But when the plaintiff sends  
3 the supplement to Centrality, they press the button. I'm  
4 positing, why shouldn't plaintiff also send a separate e-mail  
5 to whoever's responsible for that plaintiff, to let them know  
6 that something was filed on Centrality?

7           MR. SLATER: Hello, Your Honor, it's Adam Slater.  
8 Could I just make a suggestion? Because I think there's an  
9 easy fix to this. Why don't we just say that we will -- when  
10 a supplement is made on Centrality the defense can give us  
11 one person with one e-mail address where the confirmations are  
12 going to, and that person can farm it out to whoever they want  
13 to farm it out to on their side. So we just know we send it  
14 to one person every time we make an update, it confirms it,  
15 there's an e-mail that confirms it. Wouldn't that -- I think  
16 that would solve the problem.

17           THE COURT: Sounds like a good idea to me.  
18 Ms. Lockard, why don't you talk to the plaintiffs about that,  
19 and that's an extra step that I think would address your  
20 issue. If a filing is improperly filed on Centrality, the  
21 responsible defense lawyer will know it and can track it down.

22           But to address your specific issue, suppose a  
23 supplement is filed and a defendant is not satisfied that the  
24 deficiency has been satisfied, right? That's what you're  
25 positing. Isn't the burden then on the defendant to contact

1 the plaintiff again?

2 MS. LOCKARD: Your Honor, this is an example that  
3 they -- this is a perfect example of what I'm talking about.  
4 There's the *Holland* case, right. So the plaintiff indicated  
5 that he had uploaded the medical records to Centrality, the  
6 defendants did not get the medical records because there was  
7 an extra -- there's a separate step required on the Centrality  
8 site that requires, you know, the records to be made available  
9 to defendants.

10 So we're getting a notice perhaps that there's a  
11 supplement that's been loaded but we're not getting the  
12 records. Plaintiff thinks he's uploaded the records. We  
13 don't get them. If we sent the deficiency letter, it should  
14 be on the plaintiffs -- it should be the plaintiffs' burden to  
15 reach out to us. We've raised a deficiency, they need to  
16 respond.

17 You know, just submitting more stuff to Centrality  
18 without truly addressing the issue with counsel doesn't seem  
19 satisfactory. It's not that much of a burden. You know, we  
20 have sent the deficiency letter with the right person to  
21 contact. We will make sure that happens. There's no reason  
22 the plaintiffs' lawyer on that side can't pick up the phone  
23 and call that lawyer.

24 THE COURT: You want the plaintiffs' lawyer to pick  
25 up the phone and say, Mrs. X or Ms. X, we've filed the

1 supplement on Centrality, go look at it?

2 MS. LOCKARD: I want the plaintiff --

3 THE COURT: That's a waste of time.

4 So this is what you're going to do. Let's bring this  
5 to closure. There's going to be a contact person that  
6 defendant notifies. Mr. Slater's suggestion is a good one.  
7 Notice is going to go to one representative of the defendant  
8 who will farm it out to the defense lawyer who's responsible.  
9 If the defendant is not happy or satisfied with the  
10 supplement, then it becomes their duty to pick up the phone  
11 and call the plaintiffs' lawyer again, okay? And that's the  
12 order to show cause issue.

13 Let's now go to the sales and pricing issue. Again,  
14 we've said that we're going to finalize all disputes regarding  
15 the sales and pricing issue at the July 29th conference.  
16 There's going to be supplemental document productions between  
17 now and then.

18 We agreed to see if there were any issues that would  
19 help advance the ball discussing at this conference so we  
20 don't have to wait a month to resolve the issue. The general  
21 impression I'm getting from the correspondence is it's déjà vu  
22 all over again with the search terms issues. The parties are  
23 arguing back and forth about the issue, and why wait until  
24 July 28th to work it out? Why can't they just work out the  
25 issues now?

1 Exemplar documents are certainly going to be helpful.  
2 Plaintiffs are going to get them one way or another in the  
3 case. If they get them, they can talk more intelligently  
4 about what they want and don't want. They can all help  
5 advance the ball. So I think it's a good idea to give  
6 exemplars to the plaintiff.

7 With regard to the wholesaler/retailer issues, I'm  
8 aware that they haven't produced documents yet, but they take  
9 the position that the macro issues have to be addressed first,  
10 which they will be on July 6th, and they want to see what the  
11 manufacturers produce, so I would love to advance the ball and  
12 have them produce exemplars, but it's somewhat of a  
13 sympathetic position. So those are my general thoughts.

14 Mr. Slater, I don't know what to do here about this  
15 issue. Is there something you think we can do now that will  
16 help advance the ball so we don't have to wait a month or two  
17 to hash out these issues?

18 MR. SLATER: And I'll hand off to a few other people  
19 to get into more detail if they want to supplement what I say.  
20 But I think this is an example of where we -- we're here now  
21 and we're talking about July 29th, but this is a process  
22 that's been going on, for example, there's been discussions  
23 with the wholesalers going back to February.

24 And I'll start with them, because -- and I do  
25 understand where you're coming from, that the macro issues are



1 still to be decided, but we've been asking them for exemplars  
2 of what they got from the manufacturers and what they gave  
3 downstream to the retailers. What do the documents look like,  
4 and most important, what's the type of information that is  
5 documented there? Because, for example, we needed that in  
6 order to oppose their macro briefing. We never got it. It  
7 would have really been helpful to us to actually see the  
8 documents as opposed to have to just answer in a vacuum a lot  
9 of arguments, and I think it would have been helpful to the  
10 Court.

11 Our most recent call yesterday, the request was, why  
12 don't you put in writing what you're looking for. That was  
13 what Ms. Whiteley was asked to do by counsel for the  
14 wholesalers and it was really kind of like, we've been telling  
15 you for months, now you want us to again write something and  
16 put something in an e-mail. It's sort of like a, you know,  
17 remembering Muhammad Ali, it's almost like a rope-a-dope.  
18 Like okay, we'll talk more, then we'll let you know what we  
19 can do, then we'll ask you again to tell us what you want.

20 And our problem is that it's just been going on for  
21 so long, and we would think it would be such an easy thing to  
22 give us something that obviously we're entitled to, obviously  
23 will help to give them information, and ultimately, I can't  
24 imagine they think, regardless of how the macro issues are  
25 decided, that they're not going to have to give us the types

1 of documents that they have used in their transaction anyway.

2 So we've already lost what we thought was going to be  
3 the benefit in terms of the macro briefing, and we had to do  
4 it largely in a vacuum, the opposition.

5 We're still working to a large extent in a vacuum and  
6 so, you know, one of the things I suggest is, well, why don't  
7 you just give us exemplars of whatever you got from the  
8 manufacturers and whatever you gave downstream, and they said,  
9 well, why don't you tell us which specific documents you want,  
10 and our answer was, well, we don't know what you use because  
11 we can't even get that answer.

12 And then Ms. Whiteley asked for, well, how about a  
13 redacted invoice and they said, we'll go back to our clients  
14 and see if they'll be willing to do that.

15 So, I just want to give you the flavor a little bit  
16 of what we're up against and it's been, honestly, you know,  
17 the meet-and-confer process has become, I would say it again,  
18 sort of rope-a-dope thing, where we just don't really ever get  
19 to a closure point. And I think you can understand from the  
20 tone of our letter that we have certain frustration because we  
21 know that starting in a few weeks, the rubber is going to hit  
22 the road and millions of pages of documents are going to start  
23 getting dropped on us. And these are all things that really  
24 should have been handled already, so that we could have had  
25 this basis and this foundation.

1           So what we're trying to do in defense as to what's  
2 coming and to try to not to keep pushing issues down the line  
3 that are really basic things, and if I transition to the  
4 request of ZHP, we can keep talking, and it always sounds  
5 good, well, we'll continue to meet and confer. But the  
6 questions we're asking are the types of questions that you  
7 never bring to a court, and that's what a lot of this  
8 meet-and-confer process and a lot of what Your Honor is having  
9 presented to you is things that you probably have never seen  
10 these types of disputes before because this stuff just happens  
11 automatically, the parties say, sure, we'll tell you this,  
12 we'll tell you that, we'll give you this information, we'll  
13 tell you what types of systems we're using.

14           I mean, this is so basic that it shouldn't be that  
15 we're going to get whatever the defense wants to give us while  
16 we have to come and bother Your Honor. And that's, again, the  
17 source of our frustration and that's why we're trying to move  
18 this along. We'd like to get this out of the way as soon as  
19 possible for when we all know the types of disputes and the  
20 types of issues we're going to be dealing with going forward,  
21 where we really have really heavy issues in the case coming  
22 up, things like are the document productions compliant with  
23 ESI protocol. Why aren't custodian productions being made for  
24 certain witnesses that we prioritized. The motion to dismiss  
25 briefing, the deposition protocol which we'll be sending to

1 the defense shortly, et cetera, et cetera. So I'll leave it  
2 to Ms. Whiteley and Mr. Stanoch if they want to add what I'm  
3 saying. But I think that's really the flavor of where we're  
4 coming from.

5 One other thing before I'll hand off. For example,  
6 with the manufacturers with these issues with exemplars or  
7 giving us information, you know, ultimately, they have to give  
8 us everything that they exchanged anyway with the other  
9 parties. But when you flip back to the wholesalers and they  
10 say, well, why don't we wait and see what the manufacturers  
11 are giving, they're not allowed to withhold documents because  
12 someone else is going to give information through a different  
13 document that's kept in a different format from a different  
14 defendant. I mean, we have to ultimately be able to try to  
15 fill all the gaps, and it's unlikely everyone is going to give  
16 us identical information, which is why we have to take  
17 discovery from each defendant.

18 So, again, I'll hand off to my colleagues, hopefully  
19 that gave some good overview to where we are.

20 THE COURT: Let me just add a comment. This is like  
21 the same dispute we're having with each of these general  
22 categories we're dealing with, the search term issue, the  
23 protocol issue, the orders to show cause, the parties argue,  
24 argue, argue, the Court finally puts the hammer down, and two  
25 days before the hearing to address the issue and decide the

1 issue, the parties work it out. I don't know why we have to  
2 go through that on every single issue.

3 Listen, sales and pricing discovery is plainly  
4 relevant to the case. There's going to be legitimate disputes  
5 about what has to be produced, but that's a subset of clearly  
6 relevant information, and if the plaintiffs don't get it  
7 voluntarily, they're going to get it through a 30(b)(6) or a  
8 witness deposition.

9 From my experience, having done this 26 years before  
10 I've been on the bench, it's a lot easier to work it out than  
11 to prepare and produce a 30(b)(6) witness to testify about  
12 these issues.

13 Just like with the core documents, I think if  
14 plaintiffs had the basic rudimentary information, it helps  
15 them frame their request, it helps them narrow the request, it  
16 helps the Court decide the proportionality issue.

17 So what I'm saying is, shouldn't there be a subset of  
18 clearly relevant discoverable exemplar documents that the  
19 defendants can get their arms around so they can fine tune  
20 their request and we can avoid, you know, regular disputes  
21 about these issues.

22 I think we should hear from the defendant before we  
23 hear from Miss Conlee Whiteley and co-counsel.

24 Defendants, I mean the wholesalers and retailers,  
25 clearly there's exemplar documents that are going to be

1 produced in the case sometime. Why not produce the documents,  
2 or examples, not the documents, examples of the documents now  
3 so you can -- so the plaintiff can fine tune what they need.  
4 How does that hurt the wholesalers and retailers? How does it  
5 hurt the defendants to produce the documents that are going to  
6 be produced July 15th or sometime after that?

7 So defendants, let's hear from you.

8 MR. GEOPPINGER: Good morning, Your Honor. Jeff  
9 Geoppinger for the wholesalers. If Ms. Johnston permits, I'll  
10 go first because our name was brought up.

11 Your Honor, the wholesalers don't think exemplars are  
12 controversial and production of them is controversial, their  
13 request for production of them in the draft set that are  
14 appended to the macro discovery, as you alluded to, was the  
15 plan, as far as we understood all along, to resolve those  
16 issues and finalize the request. The request for exemplars  
17 are in there, documents will be proud in response to those  
18 requests.

19 The issue, Your Honor, that I do have to take issue  
20 with is the idea that this has been something that's been  
21 discussed since February is not accurate.

22 THE COURT: Let's not go forward with that.

23 MR. GEOPPINGER: Okay. So on June 10th we discussed  
24 this issue with Ms. Whiteley. She advised that Mylan had  
25 produced an exemplar, and that she would provide us

1 correspondence about what exemplars they were looking for. I  
2 understood that to mean, like, what dates they wanted, what  
3 years, maybe between which defendants. Obviously, we could  
4 produce an exemplar from my client to be one between Teva, one  
5 between Mylan, one between ZHP -- I mean, my understanding is  
6 there was going to be correspondence about what it was that  
7 they were focusing on. That did not come. The letter was  
8 filed on the 16th or 17th which raised this issue with the  
9 Court. We had a call, there was discussion that we should  
10 meet and confer. We met and conferred yesterday.

11           Again, I thought the meet-and-confer conference would  
12 be about, you know, wholesaler defendants, this is the kind of  
13 exemplar we're looking for, you know, not the documents. The  
14 wholesalers know what documents there are. There's a bill of  
15 lading, there's a T3 document, there's other documents. But  
16 some direction from the plaintiffs about who they wanted them  
17 between, maybe even direction about what we got from the  
18 manufacturers and we want you to produce sort of the  
19 corresponding exemplar documents to sort of match up with, for  
20 instance, what Mylan gave us.

21           You know, you don't have to take my word for it. In  
22 their own letter from the 16th, the plaintiffs noted that the  
23 stuff that they got from Mylan on the exemplar was not what  
24 they were looking for and they went back to them to clarify.

25           So the idea was -- the idea from the wholesalers

1 isn't we aren't -- we're willing to work with them and produce  
2 these documents even ahead of the finalization of the RFPs,  
3 but my understanding was that we were going to get some  
4 direction about what it was they were looking for, and  
5 hopefully in writing, because that's usually the best way to  
6 get it.

7           But yesterday I got mixed messages about whether we  
8 should just go pull something off the shelf and hand it to  
9 them and say here's the exemplar, or whether they're going to  
10 provide any of that direction in terms of what they're looking  
11 for. If they just want us to pull something off the shelf and  
12 put it together and it doesn't matter to them which, you know,  
13 what manufacturer it's between or what retailer it's to, then  
14 fine, we'll do that. We will do that and work on that and get  
15 that done by, you know, probably even before the RFPs are  
16 finalized. But if there's direction to be had, you know, we  
17 thought we were going -- that was what I was -- understanding  
18 we were going to get through our June 10th conference, through  
19 the correspondence to the Court on the 16th, through their  
20 conferences with the other manufacturer defendants who have  
21 been producing exemplars.

22           So if there's direction to be had, we'll certainly,  
23 you know, we certainly like to receive it. If not, then so be  
24 it, we'll start working on that promptly.

25           MS. DAVIS: Judge, this is D'Lesli Davis on the macro



1 issues and I wonder if I might show the Court just through a  
2 little bit of the lens of how this looks from the macro issues  
3 for just a moment, I'll be brief.

4 But the structure of the RFPs as proposed by the  
5 plaintiffs made a great deal of sense as they came down to  
6 what we agreed to. They wanted the detail of each sale and  
7 purchase by wholesalers, they wanted the date, the quantity,  
8 the cost, the whatnot. And while we consider that to be  
9 burdensome and duplicative as briefed to Your Honor, that at  
10 least made sense, it was summary information that would come  
11 out of our computer files, and we told them that lot and batch  
12 and expiration data information is not included therein and we  
13 don't know how they get to product ID from that. And we gave  
14 them an exemplar for that.

15 There are other requests for production of exemplars  
16 of what I'm going to call shipping documents, and that has  
17 been tabled. We can call that source documents. That doesn't  
18 include lot and batch information there for retailers either,  
19 but that has been on hold, and the other RFPs with regard to  
20 recall information. They want to see how we get this product  
21 off the shelf. That's also been tabled while we address the  
22 macro issues related to the computer summary detail  
23 information.

24 Today is the first day I'm hearing that they have  
25 somehow been prejudiced in their ability to brief the macro

1 issues that they identified by our failure to produce  
2 information that's an exemplar in a tabled non-macro issue  
3 RFP.

4           So we're a little bit blindsided by that and we  
5 object to an included assertion that the macro issues as  
6 identified by the plaintiff are not currently sitting on your  
7 desk and ready for hearing on July 6th. As Mr. Geoppinger has  
8 just said, we're happy to work with them on these other  
9 exemplars. That just has not been the focus and it certainly  
10 hadn't been the subject of macro briefing.

11           MS. JOHNSTON: Your Honor, this is Sarah Johnston for  
12 the retailer defendants, if I can just jump in very briefly  
13 before we turn to plaintiffs. I think that the letter that we  
14 saw yesterday and the one we saw last week highlights what has  
15 been a fundamental problem with trying to negotiate the  
16 discovery and really any issues with plaintiffs in this  
17 litigation, and that is that there is not a -- there is not an  
18 effort to articulate two things. And that is what is it that  
19 you want, and who is it that you want it from. And I guess  
20 the third point would be, and have you asked that group of  
21 defendants that you want something from for that thing. And  
22 here, we see a letter where plaintiffs say that they spoke to  
23 the wholesalers and retailers yesterday about exemplar  
24 documents.

25           No. 1, I don't know what exemplar documents are. We

1 talked about them in broad conceptual terms, but I don't know  
2 what those documents are, and they've never been articulated.  
3 And in terms of how we've discussed them, we've discussed them  
4 in broad strokes a few weeks ago, but not since, and certainly  
5 not yesterday.

6           So it's tough for us to respond to -- respond to this  
7 idea that we should have produced documents a long time ago or  
8 that we are in the process of discussing producing documents,  
9 but we're not having those discussions. So to get the letter  
10 yesterday or last night that says, you know, we've had the  
11 discussions with the retailers and we think that the retailers  
12 should be producing these documents, No. 1, I don't know what  
13 documents they're talking about, and No. 2, no, we haven't had  
14 those discussions. And so I think there needs to be a better  
15 effort to articulate what it is that you want, who it is that  
16 you want it from, and to truly confirm it, you'd actually have  
17 those discussions with a peer of defendants that you're  
18 seeking that information from.

19           THE COURT: In fairness, I mean, no one can dispute  
20 that the plaintiffs have to give you some sort of direction on  
21 what they're looking for, but on the other hand, plaintiffs  
22 don't know what the defendants have, so they can't say, well,  
23 we want type X document or type Y document, because they don't  
24 know yet what types of documents each of the parties keeps,  
25 what format they're in. All they can say is, listen, we're

1 trying to get at what price you paid for the drugs and  
2 rebates, whatever, whatever. I mean, how specific do you want  
3 plaintiffs to be and how can they be as specific as you want  
4 without them knowing precisely what document the defendants'  
5 have and without taking, God forbid, a 30(b)(6) deposition on  
6 this issue.

7 MS. JOHNSTON: Certainly, Your Honor, I think the  
8 subset to that would be making sure we're on the phone to have  
9 that discussion, which for the retailers, we were not.

10 THE COURT: Okay.

11 MR. SLATER: From the wholesalers, you asked what  
12 information as to the specific documents the wholesalers, you  
13 know, with the understanding from the RFP about what they're  
14 looking for can put those together. But the issue I was under  
15 the impression we were discussing is, you know, the plaintiff  
16 certainly didn't know who the defendants are. If they want  
17 exemplars from between AmerisourceBergen and Teva;  
18 AmerisourceBergen and Mylan; AmerisourceBergen and ZHP or one  
19 of the three or two of the three, or something that matches  
20 with something they've already gotten from one of the  
21 manufacturers, that's the information and the direction that  
22 they can provide us without, you know -- that can be provided  
23 by the plaintiffs. I understood that that's what they were  
24 going to do. But as I said, after yesterday, it's a mixed  
25 message about whether that's coming or not or whether we

1 should just proceed to basically identify the exemplars  
2 ourselves and hand over an exemplar and we'll go from there.

3 It appears that that's what Mylan did on their first  
4 go around with an exemplar and the plaintiffs responded that  
5 more needed to be done. So we're trying to avoid a situation  
6 like that.

7 MS. WHITELEY: Your Honor, this is Conlee Whiteley.  
8 If I may address at least a couple of the calls that we had on  
9 the meet and confers. We did start this process in February,  
10 and I know you don't want to digress, but just for context,  
11 what we were told then by the wholesalers is that it would be  
12 more helpful for us to get the information from the  
13 manufacturers because that would -- the manufacturers have the  
14 duty to produce, they do not, and to the extent they're  
15 willing to work with us, they would like to keep the  
16 manufacturer's documents. I then began that day working with  
17 Mr. Trischler to try to do that. I eventually got the  
18 exemplars that we were hoping to get within a week in their  
19 formal discovery production.

20 As it turns out, we got those exemplars, there was  
21 some helpful information there, but they were not produced  
22 within the time period of the class, and we wanted to have  
23 something produced within the class period and something  
24 produced at least for our first exemplar to be to one of the  
25 wholesalers, not to CVS.

1 I pointed that out to Mr. Trischler. He said that he  
2 would work on getting me a new exemplar, which he did  
3 yesterday. It took some time to make it through the uploading  
4 process and through the day, and I spoke to Mr. Geoppinger  
5 just yesterday and I explained to him what was going on, I  
6 gave him the status of that production. I told him I would  
7 ask Mr. Trischler for permission to produce it to him. I did.  
8 Mr. Trischler did give me that permission to produce it. I  
9 have it now in pdf form this morning, which I plan to send to  
10 him. That's how the call ended, so I'm not sure why we're  
11 unclear on that specific issue. I'm going to send that to him  
12 and we're going to work further. The frustration is that now  
13 it's June and this is something we had hoped to accomplish in  
14 late February or early March.

15 THE COURT: Okay, so where does that leave us,  
16 Ms. Whiteley at the moment, looking forward?

17 MS. WHITELEY: Looking forward today, the Mylan  
18 documents will be sent to the wholesaler defendants and I will  
19 ask for permission from the other manufacturing defendants to  
20 allow us to do the same for them, and then I'm going to work  
21 with the wholesaler defendants through a meet-and-confer  
22 process to try to match up exactly what they need. They're  
23 going to speak to their clients and I believe they've  
24 represented that they can get us at least some information and  
25 that they know what we want, but they do have to get

1 permission for some redacted information so that we could at  
2 least get forms to see how the transaction goes forward even  
3 if we don't have the actual price. That is how we ended our  
4 calls yesterday, and we intend to move forward with that today  
5 and over the next few days.

6 THE COURT: Is that acceptable to the wholesalers and  
7 retailers and defendants?

8 MR. GEOPPINGER: Your Honor, Mr. Geoppinger.  
9 Certainly moving forward with the meet and confer is  
10 acceptable, yes. With respect to us knowing what they want, I  
11 think we have to have that meet and confer to nail that down.  
12 So -- and with respect to pricing data in these exemplars as  
13 we discussed yesterday, the pricing issue is squarely what's  
14 before the Court on July 6th. So, you know, pending that  
15 ruling, we would be redacting any pricing information from an  
16 invoice that would be included in a, quote unquote, exemplar  
17 document between whatever parties that the plaintiffs are  
18 asking us to identify.

19 MR. SLATER: Your Honor, it's Adam Slater, I  
20 apologize. I think there's a really important point that  
21 Mr. Geoppinger just brought out that I think is an underlying  
22 theme to everything that's going on, where he said we're only  
23 arguing about the pricing. We're not. And the sales is very  
24 important. I think it's important to really put in front of  
25 the Court now for Your Honor where a major, major macro issue

1 in this litigation is going.

2 As Your Honor has seen, I assume, in the briefs filed  
3 by the retailers and wholesalers, they both advised the Court  
4 that it will be impossible for the plaintiffs or anybody in  
5 the world to do a product ID tracing from manufacturer of API  
6 down to a patient or back up the chain. Basically trying to  
7 say, it's going to be impossible to do the type of  
8 identification that we are seeking to do and which everybody  
9 expects us to make a high priority in this case, both for  
10 liability and damage modeling purposes.

11 So when counsel said, A, all we're talking about is  
12 sales, that's only a half of it, and two, they're happy to  
13 meet and confer more, I have to tell you I got concerned when  
14 I heard that, and I think that it's important to say this. I  
15 think that our good faith and our good will has been, to a  
16 certain extent, taken advantage of where we never imagined we  
17 would be here in late June still talking about defining for  
18 the defendants what we're looking for when we've been defining  
19 it for months.

20 So, you know, Ms. Whiteley talked about the process  
21 we want to follow. I would like to talk about where we'd like  
22 to get to, which is within a very short time, like two weeks  
23 on the outside, and that seems like a long time considering  
24 how clear it should be to the defendants what they need to  
25 give us. We want the outgoing and ingoing exemplars. They



1 know what they use when they transact these -- when they sell  
2 or purchase these drugs. They know what the transactional  
3 documents are. They should be just giving those to us.

4 And then, when we get the documents on the larger  
5 production, we'll be able to compare what's coming in against  
6 these exemplars to see if the sets of documents are matching  
7 up, we'll be able to test the analysis that's been given by  
8 them and the assertions of what does or does not exist or  
9 whether things could be tracked, because where we're going  
10 with this, it's a very difficult what I'm going to call a  
11 litigation shell game. As you heard, the wholesalers say,  
12 well, go get it from the manufacturers. The manufacturers  
13 say, well, here's something, go get it from the wholesalers.

14 You know what they've never done, Judge? The  
15 defendants have never on their side been ordered to talk among  
16 themselves and make sure that what they give us they can all  
17 agree, yes, this is the complete set that we'll show you how  
18 the transactions are built, and the documents that fill those  
19 transactions out.

20 From my perspective, that would be incredibly helpful  
21 if the defendants had to actually talk to one another and stop  
22 using us in this game of telephone where we never can get it  
23 right.

24 If they had to talk to each other and say, we're  
25 going to collectively tell you these are exemplars from all

1 transactional documents up -- down the chain all the way to  
2 the consumer from the top of the chain, then at least we'll  
3 have something that we can all agree is a complete set that  
4 shows us what information was going down and who is getting it  
5 and when they were getting it, and then when we start to take  
6 depositions at least we'll have that information, and when we  
7 look at the documents we get in the productions, we can  
8 compare.

9 I don't know any other way to get us to the end  
10 point, because I believe that if we continue to meet and  
11 confer as we're talking about doing, this will never end.

12 THE COURT: I'm not sure what to say --

13 MR. SLATER: Mixed messages.

14 THE COURT: -- what to say, but we're not going to  
15 decide and issue an order today because we said, the Court  
16 said that we're going to wrap up the sales and pricing issue  
17 at the July 29th conference and we'll brief it and argue it  
18 and dispose of it.

19 Mr. Slater, the parties just have to meet and confer,  
20 they just have to. This litigation is too big, too  
21 complicated, too costly, that the parties can't work, not  
22 every issue out, parties can disagree in good faith, but basic  
23 issues, such as getting the plaintiffs unquestionably relevant  
24 examples of supply-type documents. They just have to be  
25 produced. I'm not sure what else the Court can say.

1           The parties are just going to have to roll up their  
2 sleeves and work this out, just like they worked out the --

3           MR. SLATER: And, Your Honor, I'm aware and I  
4 understand the process is going to continue. I really wanted  
5 to place on the record what our fundamental concerns are and  
6 where I'm concerned this is going. So at least that's now  
7 been placed on the record and laid out as we continue to talk.  
8 I know that we're going to continue to talk, but I wanted to  
9 make it very clear that I believe we're going to get to the  
10 point, unfortunately, where what I just said may have to  
11 become the procedural posture of what we're ruling on, but I  
12 hope not. But I wanted to get that out there because  
13 ultimately, if the defense is telling us this is going to be  
14 an impossible task, well, we're going to be heavy in the  
15 30(b)(6) depositions to have to test that hypothesis.

16           THE COURT: We'll see. I read the affidavits of both  
17 sides, so I'm familiar with the issues.

18           I'm not sure there's anything else to say on this  
19 sales and pricing issue. The parties just have to continue to  
20 talk. To the extent plaintiffs can specify what they need,  
21 that's great. They obviously don't know the exact type of  
22 documents the defendants have, but wholesalers and retailers,  
23 I don't want to wait until a month from now to roll up our  
24 sleeves on this issue. You should be working on it now. So  
25 that's all we have to say. You can tell my frustration

1 because I feel a little bit like we're going in -- like you're  
2 going in circles around this and we'll be back to the same  
3 thing with the search term issue the day before July 29th, the  
4 parties will work this out, and I hope we don't get to that.

5 Are there any other issues we need to address on this  
6 call, counsel? We're on for oral argument on July 6th. If  
7 you don't get a ruling that day, you'll certainly get it very,  
8 very, very quickly. And I spoke to Judge Kugler, he said he  
9 didn't have anything in particular he needed to address with  
10 the parties today.

11 Anything else for the good of the order?

12 Okay. Nothing else, we're adjourned and good luck.

13 RESPONSE: Thank you, Your Honor.

14 (11:13 a.m.)

15 - - - - -

16  
17 I certify that the foregoing is a correct transcript  
18 from the record of proceedings in the above-entitled matter.

19

20 /S/ Karen Friedlander, CRR, RMR  
21 Court Reporter/Transcriber

22 June 24, 2020  
23 Date

24

25

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